

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY WELFARE FUND,)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER LOCAL 669 UA EDUCATION FUND,)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY PENSION FUND, TRUSTEES)
OF THE SPRINKLER INDUSTRY SUPPLEMENTAL)
PENSION FUND, TRUSTEES OF THE INTERNATIONAL)
TRAINING FUND, ROAD SPRINKLER FITTERS)
LOCAL UNION 669 WORK ASSESSMENTS, ROAD)
SPRINKLER FITTERS LOCAL UNION 669 INDUSTRY)
ADVANCEMENT FUND AND ROAD SPRINKLER)
FITTERS LOCAL UNION 669 EXTENDED BENEFIT FUND)
8000 Corporate Drive)
Landover, MD 20785,)
Plaintiffs,)
v.) C.A. NO.
AFP SPECIALTIES, INC.)
1606 Barlow Street)
Traverse City, MI 49686)
Serve: Gordon Day, President)
1606 Barlow Street)
Traverse City, MI 49686)
Defendant.)

COMPLAINT

(FOR BREACH OF COLLECTIVE BARGAINING AGREEMENT,
TO COLLECT CONTRIBUTIONS DUE TO PLAINTIFF FUNDS, FOR BREACH OF
SETTLEMENT AGREEMENT AND TO COLLECT WITHDRAWAL LIABILITY DUE)

Parties

1. Plaintiffs Trustees of the National Automatic Sprinkler Industry Welfare Fund,
Trustees of the National Automatic Sprinkler Local 669 UA Education Fund, Trustees of the
National Automatic Sprinkler Industry Pension Fund, Trustees of the Sprinkler Industry

Supplemental Pension Fund, Trustees of the International Training Fund, Road Sprinkler Fitters Local Union 669 Work Assessments, Road Sprinkler Fitters Local Union 669 Industry Advancement Fund and Road Sprinkler Fitters Local Union 669 Extended Benefit Fund (hereinafter "NASI Funds") are employee benefit plans as that term is defined in Section 3(3) of the Employee Retirement Income Security Act ("ERISA") of 1974, 29 U.S.C. § 1002(3). Plaintiff Funds are established and maintained according to the provisions of the Restated Agreements and Declarations of Trust establishing the NASI Funds (hereinafter "Trust Agreements") and the Collective Bargaining Agreement between Road Sprinkler Fitters Local Union No. 669 (hereinafter "the Collective Bargaining Agreement") and the Defendant AFP Specialties, Inc. (hereinafter "AFP"). The NASI Funds are administered at 8000 Corporate Drive, Landover, Maryland 20785.

2. Defendant AFP is a corporation existing under the laws of the State of Michigan with offices located in Michigan. Defendant transacts business in the State of Michigan as a contractor or subcontractor in the sprinkler industry and all times herein was an "employer in an industry affecting commerce" as defined in Sections 501(1), (3), 2(2) of the Labor-Management Relations Act, 29 U.S.C. Sections 142(1), (3) and 152(2); Section 3(5), (9), (11), (12), (14) of ERISA, 29 U.S.C. Sections 1002(5), (9), (11), (12), (14); and Section 3 of the Multi-Employer Pension Plan Amendments of 1980, 29 U.S.C. § 1001(a).

Jurisdiction

3. This Court has jurisdiction of this action under Sections 502 and 515 of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1132 and 1145, and under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a). This is an action for breach of a Collective Bargaining Agreement between an employer and a labor organization representing

employees in an industry affecting commerce and an action to collect contributions due to employee benefit plans under the terms of the Collective Bargaining Agreement and an action for breach of a Settlement Agreement and Promissory Note. The Court also has jurisdiction of this action under Section 4301 of the Employee Retirement Income Security Act, 29 U.S.C. § 1451 because this is also an action to collect withdrawal liability due, but unpaid, to an employee benefit plan. The Court also has supplemental jurisdiction over any state law claims under 28 U.S.C. § 1367.

COUNT I

4. In 2019, the National Automatic Sprinkler Industry Pension Fund (hereinafter "Pension Fund") filed a lawsuit against the Defendant AFP seeking withdrawal liability assessed against AFP by the Pension Fund. Subsequently, the Pension Fund and AFP agreed to a settlement of this action and AFP entered into a Settlement Agreement and Promissory Note (hereinafter "settlement documents") with the NASI Funds allowing for a systematic payment over time of the withdrawal liability owed to the Pension Fund (Exhibit A). These settlement documents required, inter alia, the payment of the principal amount of \$100,000 by said Defendant to the Pension Fund in monthly installment payments over a period of 60 months. The settlement documents further provided that the Defendant AFP remain signatory to the Collective Bargaining Agreement, stay current in all future contributions to the NASI Funds for the duration of the settlement and file all monthly report forms and payments on time as required by the Funds' Trust Agreements.

5. Pursuant to the terms of the Settlement Agreement, Defendant AFP is signatory to the Collective Bargaining Agreement requiring contributions to the NASI Funds for each hour of work by employees performing installation of automatic sprinkler systems.

6. Defendant AFP is bound to the Trust Agreements and to the Guidelines for Participation in the NASI Funds (hereinafter “Guidelines”).

7. Defendant AFP employed certain employees covered by the Collective Bargaining Agreement during the period of November 2019 through the present.

8. The Defendant AFP has defaulted on the terms of the settlement documents by failing to pay contributions owed to the NASI Funds for the month of June 2021. Pursuant to the terms of the settlement documents, Defendant AFP is in default and the amount of \$53,850.61 currently owed under the terms of the settlement documents is immediately due and payable to the NASI Funds.

9. Defendant AFP has failed to make contributions due to the NASI Funds on behalf of its employees for the months of June 2021. In addition, Defendant has failed to submit report forms for these months. Pursuant to the terms of the Collective Bargaining Agreement, Defendant is obligated to submit report forms and pay contributions owed to Plaintiff Funds.

10. Pursuant to Article VI, Section 6 of the Restated Agreements and Declarations of Trust establishing the NASI Funds, when an employer fails to file the properly completed report forms, in order to determine the amounts due, the Funds are authorized to project the delinquency amount using the following formula:

... The Trustees may project as the amount of the delinquency the greater of (a) the average of the monthly payments or reports submitted by the Employer for the last three (3) months for which payments or reports were submitted, or (b) the average of the monthly payments or reports submitted by the Employer for the last twelve (12) months for which payments or reports were submitted ...

11. Using report forms submitted for the last three (3) months for which reports were submitted, the projected delinquency for the month of June 2021 is \$17,596.09 calculated as follows:

<u>Month</u>	<u>Welfare</u>	<u>Education</u>	<u>Pension</u>	<u>SIS</u>	<u>ITF</u>	<u>Work Asst's</u>	<u>Extended Benefits</u>	<u>Industry Advance.</u>
Mar. 2021	\$7,828.10	\$311.64	\$5,194.00	\$3,876.60	\$74.20	\$1,288.70	\$185.00	\$401.25
Apr. 2021	\$7,986.35	\$317.94	\$5,299.00	\$3,933.05	\$75.70	\$1,295.49	\$189.25	\$406.25
May 2021	\$8,112.95	\$322.98	\$5,383.00	\$3,995.85	\$76.90	\$1,298.52	\$192.25	\$412.75
Avg Monthly Contrib's: \$7,975.80 \$317.52 \$5,292.00 \$3,935.17 \$75.60 \$1,294.24 \$188.83 \$406.75								

12. Defendant AFP's contributions on behalf of its sprinkler fitter employees for the month of June 2021 are late.

13. Pursuant to the Trust Agreements and the Guidelines for Participation in the NASI Funds, an employer who fails to pay the amounts required by the Collective Bargaining Agreement on time shall be obligated to pay liquidated damages as follows:

- (1) If payment is not received in the Funds Office by the 15th of the month, 10% of the amount is assessed.
- (2) An additional 5% is added if payment is not received in the Funds Office by the last working day of the month in which payment was due.
- (3) An additional 5% is added if payment is not received by the 15th of the month following the month in which payment was due.

14. Pursuant to this provision, Defendant AFP is obligated to Plaintiff Funds in the amount of \$3,519.22 in liquidated damages assessed on late contributions for the month of June 2021, plus interest from the date of delinquency through the date of payment at the rate provided in 29 U.S.C. Section 1132(g) and the Restated Agreements and Declarations of Trust establishing the NASI Funds.

WHEREFORE, in Count I, Plaintiff Funds pray for judgment against the Defendant AFP Systems Inc. as follows:

- A. In the amount of \$53,850.61 as currently owed under the terms of the settlement documents.
- B. In the amount of \$17,596.09 for contributions due for work performed during the month of June 2021, plus costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.
- C. In the amount of \$3,519.22 for liquidated damages assessed on late contributions for the months of June 2021, plus costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.
- D. For costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.
- E. For all contributions and liquidated damages which become due subsequent to the filing of this action through the date of judgment, plus costs, interest, and reasonable attorneys' fees, pursuant to 29 U.S.C. § 1132(g) and the Restated Agreements and Declarations of Trust establishing the NASI Funds.

F. For such further relief as the Court may deem appropriate.

Respectfully submitted,

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By: _____ /s/
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Jacob Szewczyk
Maryland Bar No.

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Complaint has been served by certified mail, as required by 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(h) this 12th day of August, 2021 on the following:

The Office of Division Counsel
Associate Chief Counsel (TE/GE) CC: TEGE
Room 4300
1111 Constitution Avenue
Washington, DC 20224
Attention: Employee Plans

Secretary of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
ATTENTION: Assistant Solicitor for
Plan Benefits Security

/s/

Charles W. Gilligan

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